IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7489 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE ANANT S.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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TRIVEDI SANGITABEN KIRTILAL - Petitioner(s)
Versus
DIST.PRIMARY EDUCATION OFFICER & 2 - Respondent(s)

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Appearance :
MR KB PUJARA for Petitioner(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 3.
MR HS MUNSHAW for Respondent(s) : 1,
MRS MANISHA L SHAH ADDL.GOVERNMENT PLEADER for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE ANANT S.DAVE

Date : 05/12/2006

ORAL JUDGMENT

1. This petition, under Article 226 of the Constitution of India, is filed by the petitioner with a prayer to quash and set aside

the order passed by the respondent no.3, 'Vidhya Sahayak Samiti', dated 31.08.1999 and also to quash and set aside the new advertisement dated 30th April, 1999 issued by the respondent no.1 and further direct respondent no.1 to give appointment to the petitioner as 'Vidhya Sahayak', in the category of female ATD candidates, by applying criteria of 30% reservation provided for women as per the policy decision dated 09th April, 1997 issued by the General Administrative Department of Government of Gujarat.

2. It is the case of the petitioner in exercise of powers conferred by the proviso to Article 309 of the Constitution of India, Governor of Gujarat made certain rules by which the benefit of reservation of 30% was provided for women in the services under the State of Gujarat. The said reservation was to be made applicable to Schedule Castes, Scheduled Tribe and S.E.B.C. also.

3. The said notification was issued by the

General Administrative Department of the State of Gujarat on 09th April, 1997. It is to be noted that apropos to the above notification, circular dated 22.05.1997 came to be issued by providing certain qualifications about applicability of the notification dated 09th April, 1997.

4. The petitioner has contended that advertisement dated 25.06.1998/01.07.1998 came to be issued by respondent no.1 for “Vidhya Sahayaks” in the district of Kuchh and in response thereto, an application was preferred by the petitioner, which was acknowledged by respondent on 02.07.1998. The petitioner was interviewed on 23.09.1998 and was placed in the select list. According to the petitioner, she had merit marks of 72.26%.

5. As per the policy of the State Government 4% of the total vacancies of Vidhya Sahayaks were to be kept for ATD candidates (Arts Teachers Diploma) like the petitioner. About 574 vacancies were filled up, out of which 23 vacancies were filled in by ATD candidates i.e.

4% of the total reservation. In the district of Kuchh, reservation was extended for the recruitment of Vidhya Sahayaks, as provided for SC, ST and SEBC and also for handicapped, which came to 48% and other posts were to be filled up by un-reserved category candidates. In the category of ATD, out of 23 posts, 11 vacancies were to be filled in by reserved category and rests of 12 vacancies by un-reserved category candidates. To implement policy of reservation of 30% for women, in each of the category, atleast 4 female candidates were required to be reserved for ATD, which is 305 of 12 vacancies to be filled in by un-reserved category candidates. So according to the petitioner, she being a female candidate and having merit marks of 72.25%, ought to have been given benefit of Government notification dated 09th April, 1997 of 30% reservation for women in the services under the State of Gujarat and denial of which amount unreasonable and arbitrary and discriminatory action in violation of Article 14 and 16 of the Constitution of India, which requires to be set right by this Court.

Even letter addressed to respondent no.1 through advocate on 26.03.1999 and 28.04.1999 was not properly replied and thereafter also the petitioner had to approach this Court by filing S.C.A.No.4838 of 1999 and the petitioner was delegated to approach “Vidhya Sahayaks Committee” by an order dated 07.07.1999 by this Court and pursuant to that, representation dated 09.07.1999 was preferred by the petitioner to respondent no.3, Vidhya Sahayaks Committee, which was also rejected by an order dated 31.08.1999, impugned in this petition alongwith new advertisement given by the respondent no.1 for recruitment of Vidhya Sahayaks again in the year 1999.

6. The above contention of the petitioner was denied by the respondent no.1 as well as respondent no.3 by filing detailed affidavits with record of the advertisement and also the record of the selection of Vidhya Sahayaks, which includes name of the petitioner in the general merit list (ATD) of Vidhya Sahayaks recruitment-1998. According to the respondents,

they have applied notification dated 09th April, 1997 issued by the GAD, State of Gujarat of providing 30% of reservation under the State in toto. According to the learned advocate Mr.H.S.Munshaw appearing for respondent no.1, it is not necessary for the respondent to extend the benefit of 30% of reservation in other categories like ATD, music etc. When the provisions of above notification is extended to the total vacancies advertised, the action of the respondent cannot be held in any manner unreasonable, arbitrary or discriminatory in violation of Article 14 and 16 of the Constitution of India. According to the learned advocate for the respondent, Director of Primary Education, State of Gujarat by letter dated 15.06.1998 permitted respondent no.1 to fill up 886 posts and out of the said posts, 25% were to be filled up by inter district transfer and remaining posts to be filled up by other mode including the advertisement for direct recruitment. The learned advocate for the respondent has relied on statistics about number of vacancies filled in by earlier scheme of Bal Guru, where 272 candidates were placed on the

list, who came to be appointed later on. For remaining vacancies advertisements were published on 25.06.1998 and 10.07.1998, where the present petitioner had applied with merit of 72.26%. According to Shri Munshaw, learned advocate for respondent no.1, out of total recruitment i.e. 574 posts of Vidhya Sahayaks, more that 30% of women candidates came to be selected and in fact appointed. He has also submitted that even in the category of ATD, where 23 posts were to be filled in, for general category candidates of 12 vacancies even 30% of criteria for reservation for women applied category vice, then also the present petitioner is lacking in merit. There were three other female candidates more meritorious then the petitioner having secured and they are

(i) Ms. Ramaben Hiralal Patel

(ii) Ms. Sonalben Kachrabhai Patel and

(iii) Ms. Bhartiben Bhurabhai Patel having secured 73.96%, 73.28% and 73.21% respectively, while the petitioner had secured only 72.26%. He has also relied upon the list of 106 candidates produced at Annexure-'C' alongwith further

affidavit-in-reply filed by the respondent no.1, District Primary Education Officer. Therefore, since the petitioner is less meritorious and there are three more meritorious women than the present petitioner from general category itself, the claim of the petitioner is misconceived and the petition deserves to be rejected in exercise of powers under Article 226 of the Constitution of India.

7. Shri Munshaw, learned advocate for respondent no.1 has also submitted that issuance of second advertisement by respondent no.1 is also in accordance with law and no irregularity is committed. According to him, the said exercise is undertaken as a part of the instruction and direction given by the respondent i.e. Director of Primary Education for the second phase of the recruitment as approved. He has submitted that after adjusting various Vidhya Sahayaks eligible for district transfer at the end of first round certain vacancies were included, and, therefore, new advertisement was issued as per direction of Director of Primary Education vide his letter

dated 08.02.1999. There also about 723 Vidhya Sahayaks were to be recruited and 45 posts were to be filled in from the category of ATD where also slect list was prepared and in the list of general category candidates, last merit was 75.85% and therefore also the petitioner having only 72.26% could not have been selected and appointed.

8. In a rejoinder, Shri Kaushik Pujara, learned advocate appearing for the petitioner, submitted that other meritorious female candidates, who have secured more marks then the petitioner, have not approached before this Court and relief can be granted only to the petitioner in view of the decision of Apex Court reported in **AIR 1992 SC 80** in the case of **Sri Ashok @ Somanna Gowda Vs. State of Karnataka**. According to Shri Pujara, learned advocate appearing for the petitioner, no other person was aggrieved by the policy or the decision of the respondent authorities and approached this Court in time, and, therefore, no relief can be granted qua other similarly situated persons. Learned

Counsel has further submitted that relief cannot be denied solely on the ground of loss of time in prosecuting the proceedings in judicial or quashi judicial form and in support of the above, he relied upon **2003 (1) SCC 726** in the case of **BEG RAJ SINGH Vs. State of U.P. and Ors.**

Therefore, according to Shri Pujara, learned advocate appearing for the petitioner petition deserves to be allowed and relief as prayed for can be granted in favour of the petitioner.

9. Having heard the learned counsel appearing for the parties. First grievance is required to be looked into with regard to Government Resolution dtd.09th April, 1997, issued by the Government Administration Department, Government of Gujarat in exercise of powers conferred by the proviso to Article 309 of the Constitution of India. That the above notification reads as follows:-

> **" 2. <u>Reservation of Posts for Women:-</u>** Notwithstanding anything contained in any rules or orders relating to recruitment to public services and posts in connection with the affairs of the State-

(a) There shall be reserved in favour of women belonging to the Scheduled Castes thirty percent of the posts reserved in favour of such Castes;

(b) there shall be reserved in favour of women belonging to the Scheduled Tribes thirty percent of the posts reserved in favour of such Tribes;

(c) There shall be reserved in favour of women belongning to the Socially and Educationally Backward Classes thirty percent of the posts reserved in favour of such classes;

and

(d) there shall be reserved in favour of women thirty percent of the posts not being posts reserved in favour of the Scheduled Castes, Scheduled Tribes and Socially and Educationally Backward Classes."

10. Therefore, the reservation to the extent of 30% in favour of the women candidates belonging to different categories as enumerated in above Rule 2 remained undisputed. That further clarification issued by the GAD by circular dated 22.05.1997 is concerned, it is made clear that resolution of 09.04.1997 is applicable to all services where recruitment is made by the State of Gujarat and/or semi government

statutory corporation,, boards, universities, etc. Therefore, the claim of the petitioner that 30% of reservation for female candidates of Vidhya Sahayaks (ATD) deserves acceptance in view of the fact that ATD Vidhya Sahayaks is the category by itself and if a women candidate is deprived of reservation in such categories like ATD, music, physical education etc., the real purpose and the intention of the issuance of circular will be frustrated.

11. In a given case it may happen that there may be 30% reservation in overall recruitment but the same may reflect compliance of requirement of Government Resolution dated 09.04.1997, but at the same time, other categories of posts, like in the present case, Vidhay Sahayaks in 'ATD' category may not have representation of women candidate on the basis of 30% reservation. If the Vidhya Sahyaks (general) is having 30% reservation of women candidates, other Vidhya Sahayaks like 'ATD', 'music' and 'physical education' may not have benefit of 30% reservation of women candidates and it will

amount lopsided and uneven applicability of reservation of 30% for the women candidates. Such a situation cannot be permitted and, therefore, the rational behind reservation of 30% of women candidates may not be made available to each and every category of Vidhya Sahayaks i.e. ATD, Music and likewise. That 30% reservation in favour of women candidates has to be made applicable for each of the category, otherwise it will amount discriminatory and arbitrary exercise of power in violation of Articles 14 and 16 of the Constitution of India, which can not be permitted by this Court. Therefore, submission of Shri Munshaw learned advocate appearing for the Panchayat that Panchayat has made overall reservation on the basis of 30% of reservation in favour of the women candidate is sufficient and in due compliance of G.R.Dated 07.04.1997 is without merit.

12. Therefore, it is held that reservation of 30% in favour of women candidate is to be applied category wise by the respondent authority for

recruitment of Vidhya Sahayaks and whenever in the advertisement, posts for ATD or music vidhya sahayaks, are also advertised, reservation of 30% for women candidate to be made applicable to this categories also.

13. Now the contention of Shri Pujara about benefit to be given to the present petitioner on the basis of 30% reservation in favour of women candidate is concerned, it is clear from the record that three candidates (i) Ms. Ramaben Hiralal Patel (ii) Ms. Sonalben Kachrabhai Patel and (iii) Ms. Bhartiben Bhurabhai Patel, are more meritorious than the petitioner, who had secured 72.26% even another candidate Ms. Shilpa Chandulal who had secured 74.29% marks and belonging to SEBC category is appointed against general category candidate and thus, total four candidates are ahead of the present petitioner. The petitioner belongs to general category, and, therefore, considering even reservation of 30% for female candidates applicable to 12 posts meant for general category only 4posts at the most are available

to general category candidates. That SEBC candidate viz. Shilpaben belonging to SEBC is appointed against general category and three others candidates having more marks than the petitioner, are in the select/waiting list prepared by the respondent Panchayat. Therefore, question remains, whether even after the contention of the petitioner is accepted for applicability of 30% reservation of female candidates against 12 posts meant for general categories candidates out of total 23 posts meant for ATD Vidhya Sahayaks, on the basis of 4% reservation in favour of ATD Vidhya Sahayaks, out of 574 total posts of Vidhya Sahayaks as per the advertisement, the claim of the petitioner for appointment can be accepted or not?, and without directing the respondent panchayat to ascertain wish from three more meritorious candidates who had secured more marks than the petitioner even though they have not approached this Court for redressal of their grievances, having accepted the decision of the authority.

14. If the facts of this case are seen,

admittedly no other meritorious candidates of the select list, having better percentage than the petitioner, has approached this Court by invoking Article 226 of the Constitution of India for redressal of their grievances. Thus, the decision of the Apex Court reported in **AIR 1992 SC 980** in the case of **Ashok @ Somanna Gowda Vs. State of Karnataka,** relied upon by the learned advocate for the petitioner, come to the rescue of the petitioner. In the above case, the Apex Court refused to grant relief to other similarly situated persons on the ground that for redressal of their grievances, they had not approached the Court within reasonable time. In the present case, there is no claim on behalf of such more meritorious selected candidates than the petitioner. In view of the above, it is held that the petitioner, who has approached this Court within time is only entitled to seek relief from this Court and appropriate direction in this behalf as prayed for in the prayer clause in the petition.

I am in agreement with the submissions of

the learned advocate Shri Pujara, appearing for the petitioner that the relief cannot be denied solely on the ground of loss of time in prosecuting the proceedings in judicial or quashi judicial forum as reported in **2003 (1) SCC 726** in the case of **BEG RAJ SINGH Vs. State of U.P. and Ors.** Since the petition succeeds the impugned order dated 31.08.1999 passed by respondent no.3 is hereby quashed and set aside and following directions are issued.

15. In view of the above discussion of fact and law a case is made out by the petitioner to allow this petition by issuing appropriate direction to the respondent Panchayat for appointing the petitioner on the post of 'ATD' Vidhya Sahayaks.

16. Therefore, respondent nos.1 and 3 are directed to appoint the petitioner on the post of 'ATD' Vidhya Sahayak within four weeks from the date of receipt of the order of this Court and the above appointment shall relate back to the date of appointments of other 'ATD' Vidhya Sahayaks

in the year 1998. It is made clear that the period from 01.01.1999 till the date of appointment of the petitioner, as per the direction issued as above, shall be considered 'notional' for payment of salary, but be considered for the purpose of continuous service and other consequential benefits with regard to seniority and promotion in accordance with law. But, actual payment of salary will not be paid to the petitioner for such period.

17. With the above observations and directions the present petition is allowed. Rule is made absolute. No order as to costs. Direct Service is permitted.

(ANANT S. DAVE, J.)

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